REMARKS

Petition for Extension of Time Under 37 CFR 1.136(a)

It is hereby requested that the term to respond to the Examiner's Action of February 21, 2008 be extended two months, from May 21, 2008 to July 21, 2008.

The Commissioner is hereby authorized to charge the extension fee to Deposit Account No. 50-4364, and any additional fees to Deposit Account No. 09-0461.

In the Office Action, the Examiner indicated that claims 1 through 29 are pending in the application, that claims 1, 2, and 16-29 are rejected and claims 3-15 are objected to.

The Objection to the Specification

On page 3 of the Office Action, the Examiner has objected to the specification as failing to provide proper antecedent basis for the term "computer readable media", as claimed in claims 16-29. Applicant has amended the specification to define various known forms of "computer-readable media" that can be used in connection with the present invention.

The §101 Rejection

On page 4 of the Office Action, the Examiner has rejected claims 16-29 under 35 U.S.C. §101 as being directed to non-statutory subject matter. Applicant believes that the amendment to the specification overcomes this rejection. Accordingly, applicant respectfully requests the Examiner to reconsider and withdraw the rejection of claims 16-29 under 35 U.S.C. §101.

The §112 Rejections

On page 4 of the Office Action, the Examiner has rejected claims 17 and 18 under 35 U.S.C. §112, second paragraph, as being indefinite. Specifically, claims 17 and 18 have been rejected for reciting the limitation "the method of claim 16". Applicant has amended claims 17 and 18 to recite "the computer readable product" of claim 16. Accordingly, applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 17 and 18 under 35 U.S.C. §112.

Allowable Subject Matter

On page 6 of the Office Action, the Examiner has indicated that claims 3-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and that claims 18 to 29 are allowable over the prior art, but they are rejected as being non-statutory and unclear (claim 18). Applicant thanks the Examiner for this indication of allowable subject matter. In view of the present amendment, applicant is choosing not to amend the independent claims to include the objected-to dependent claims at this time.

Rejection under 35 U.S.C. §102

On page 5 of the Office Action, the Examiner rejected claims 1, 2, 16 and 17 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 7,197,547 to Miller et al.

The Present Invention

The present invention relates to a method and apparatus of using information pertaining to a previous collection of client requests which are grouped under a session identification code to maintain session affinity. This information includes a list of *every* server that previously serviced those requests and associates every server in the list with the collection of requests sharing the session identification code. For additional requests, the session identification code of the newly received request is utilized to assign an available server which has processed a related client request.

U.S. Patent No. 7,197,547 to Miller et al.

U.S. Patent No. 7,197,547 to Miller et al. ("Miller") teaches a technique for implementing a load balance server farm system which may be used for effecting electronic commerce over a data network. Miller includes, in column 12, lines 30-55, a description of a situation in which a second server (server B) handles a current request made of a first server (server A) when server A fails.

The Cited Prior Art Does Not Anticipate the Claimed Invention

The MPEP and case law provide the following definition of anticipation for the purposes of 35 U.S.C. §102:

> "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (*Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) M.P.E.P. §2131.

The Examiner Has Not Established a *Prima Facie* Case of Anticipation

As noted above, claim 1 specifically claims that *every* server that has previously serviced a request is included in a list of servers. Contrary to the Examiner's assertion, this language is indeed "specifically claiming aspects of the list" and therefore this claim is not as broad as the Examiner asserts on page 5. Nothing in Miller teaches or suggests the specific step of associating with the collection of requests sharing a session identification code a list of *every server in said server farm that has serviced a request in said collection.* At best, it might be considered that Miller, by implication, has some manner of identifying server B as having served the same request. This is far different than keeping a list of *every* server that has serviced a request. Without such a teaching or suggestion of keeping a list of every server that has serviced a particular request, it is entirely improper to assert that Miller anticipates the claimed invention. Further, lacking any suggestion of this claimed element, it is also improper to assert that the claimed invention is non-obvious in view of Miller; the only way to arrive at such a conclusion would be via the use of impermissible hindsight. Each of the independent claims include specific recitation of the keeping of a list of *every* server that has serviced a request. Accordingly, all of the claims patentably define over Miller and are in condition for allowance.

Conclusion

The present invention is not taught or suggested by the prior art. Accordingly, the Examiner is respectfully requested to reconsider and withdraw the rejection of the claims. An early Notice of Allowance is earnestly solicited.

The Commissioner is hereby authorized to charge the extension fee to Deposit Account No. 50-4364.

Respectfully submitted

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Date

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